

Do not lose your mind when managing disputes in hospitality¹

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ABSTRACT

Dispute resolution is a big issue in the hospitality sector. Indeed, for example, there are always customers dissatisfied with the service by the hotel they stayed in. Six alternative dispute resolutions (ADR) can be used to resolve a dispute between two parties. These six alternatives are prevention, mediation, negotiation, binding arbitration, non-binding arbitration and litigation. Nevertheless, it can be hard to decide which alternative choose when needed. The goal of this paper is to discover which type of alternative is the preferred one when managing a dispute. This paper will also try to understand why the hospitality sector can be reluctant to use mediation.

The paper is based on a Multi-attribute decision analysis, an Additive weighting calculation, a Fishbone diagram and articles written by experts on ADR. These analyses show that mediation is the preferred solution for time saving, cost saving, keeping privacy, and so on.

Even if mediation has disadvantages, it is the preferred solution. Indeed, you cannot always be sure that one alternative will be a success. But mediation is the one that will more likely meet all the objectives expecting by both party in hospitality.

Key words : Mediation, Binding arbitration, Non-binding Arbitration, Negotiation, Alternative dispute resolution (ADR), Issues of mediation, Dispute resolution

INTRODUCTION

The last century saw and allowed huge development of the hospitality sector. Improvement in travelling technics and appearance of paid holidays gave people the opportunity to travel around the world more often. Hence, the hospitality sector always needs to be improved and to offer more and more opportunities to the customers. This is the reason why nowadays the hospitality sector is really important and involves many parties.

The involvement of more and more parties is one of the main reasons for parties to have a contract as complete as possible. They need to try to forecast everything to be sure there will

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be no issues or fewer issues. Nevertheless, it is impossible to predict and avoid everything. Indeed, disputes between parties occurs and need to be resolved.

There are several dispute resolution technics. But to make the resolution easier, parties have to put a dispute resolution clause on the contract. Like this, they will always know how to resolve the dispute. The resolution will be made easier.

Even if mediation seems to be the best dispute resolution in the hospitality sector, there are other ways to resolve a dispute between two parties. A resolution can be managed with mediation, litigation, arbitration or negotiation. These resolution technics can be used in every sector. Nevertheless, for some time now, in hospitality, stakeholders are using mediation to resolve disputes between parties. Often, there is even a clause in the contract explaining that mediation will be the one used in case of a dispute.

Mediation presents many advantages compared to other dispute resolution technics. Indeed, mediation takes less time, costs less, and is private so customers will not know what the company is facing. These are the major advantages, there are others.

The other main techniques are litigation, arbitration and negotiation. These techniques will use more time, cost much, more persons will be involved and cannot be private. So, we can understand why often parties will first turn to mediation.

Nevertheless, mediation is not always working when fixing a dispute. Sometimes after mediation, parties will have to go to court or to use other techniques. Moreover, mediation is also not always the first technique chosen.

To summarize, this paper will attempt to answer the following questions:

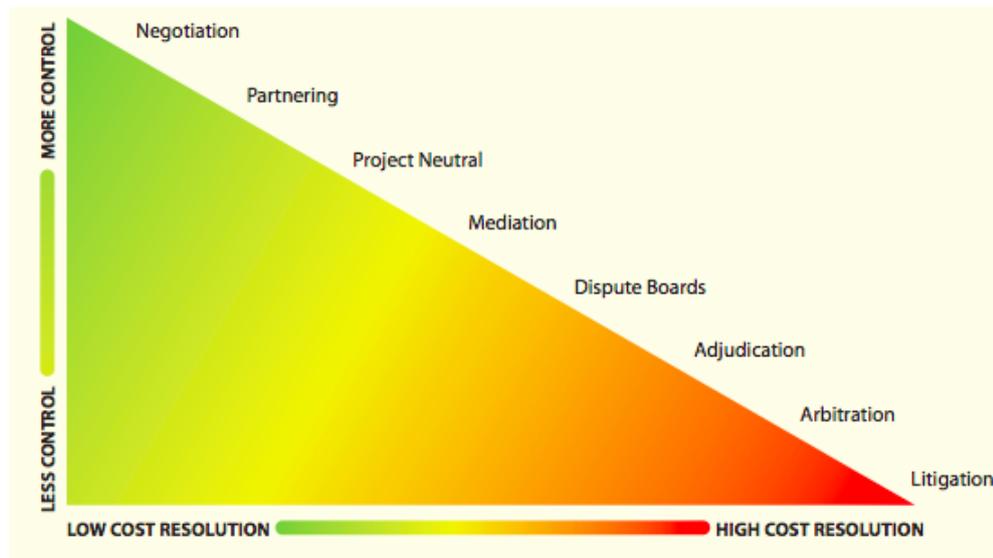
- 1) Why some parties are reluctant to use mediation when resolving a dispute for hotel contracts?
- 2) What is the best dispute resolution for a hotel contract in hospitality?

METHODOLOGY

Step 2 – Alternative Dispute Resolutions to manage a dispute between two parties

We have to keep in mind that several Alternative Dispute Resolutions (ADR) exist and are used on a daily basis when dealing with a dispute between two parties. Hence, these alternatives are Prevention, Negotiation, Mediation, binding Arbitration and non-binding Arbitration. Litigation is another solution but with this one you are going to court. As you can see with the scheme² below, these alternatives are used depending on the situation you are in and the results you are expecting.

² Revay and Associates Limited. (n.d.). Dispute resolution consortium. Dispute boards: more than resolving disputes. Retrieved from: <http://www.cca-acc.com/wp-content/uploads/2017/05/Disputeboards.pdf>



Now, that the alternatives are selected, we will develop a Multi-Attribute Decision Analysis to prove which one is more efficient.

Step 3 – What is exactly each alternative dispute resolution?

The first important thing is to have a clear definition of each alternative. It is compulsory before starting the Multi-Attribute Decision Analysis. This analysis will measure every goals and objectives for the 6 alternatives.

Each one of these alternatives have a definition given by the online business dictionary.

- Prevention = *“Directing analysis and action toward correcting the variances in the output of a process”*.³
- Negotiation = *“Bargaining (give and take) process between two or more parties (each with its own aims, needs, and viewpoints) seeking to discover a common ground and reach an agreement to settle a matter of mutual concern or resolve a conflict.”*⁴
- Mediation = *“Use of an independent, impartial, and respected third party (called the conciliator or mediator) in settlement of a dispute, instead of opting for arbitration or litigation. Unlike an arbitrator, a mediator has no legal power to force acceptance of his or her decision but relies on persuasion to reach an agreement. Also called conciliation”*⁵

³ Business Dictionary. (n.d.). Prevention. Business Dictionary.
Retrieved from: <http://www.businessdictionary.com/definition/prevention.html>

⁴ Business Dictionary. (n.d.). Negotiation. Business Dictionary.
Retrieved from: <http://www.businessdictionary.com/definition/negotiation.html>

⁵ Business Dictionary (n.d.). Mediation. Business Dictionary.
Retrieved from: <http://www.businessdictionary.com/definition/mediation.html>

- Binding Arbitration = “a legally binding, usually non-appealable decision that is rendered by an arbitrator or panel of arbitrators”⁶
- Non-binding Arbitration = “Non-binding arbitration produces a third-party decision that the parties may reject”⁷
- Litigation = “Ultimate legal method for settling controversies or disputes between and among persons, organizations, and the State. In litigation process, a case (called suit or lawsuit) is brought before a court of law suitably empowered (having the jurisdiction) to hear the case, by the parties involved (the litigants) for resolution (the judgment).”⁸

Negotiation, non-binding arbitration and mediation depend on the willingness of the parties to reach a voluntary agreement. Whereas in binding arbitration and litigation, parties have to accept the final decision. They have no choice.

Step 4 – Which criteria allow to select or reject these alternatives?

Now, that the alternatives are selected, the point is to identify the goals and objectives to have a beginning of clarification about these five dispute resolution solutions.

These goals and objectives have been selected because they are the one, each party, during a dispute, will want to achieve. These goals and objectives have been selected according to many articles written by expert on dispute resolution. You can find these articles in the bibliography.

The table below shows the reality of each alternative according to each goal. The USAID article⁹ allowed the filling of this table.

⁶ Cayuga Hospitality Consultants. (n.d.) Hospitality dispute resolution. Cayuga Hospitality Consultants Retrieved from: <https://cayugahospitality.com/consulting-services/litigation-support/dispute-resolution-mediation/>

⁷ Scott Brown. Christine Cervenak. David Fairman. (n.d). Alternative Dispute Resolution. USAID retrieved from: <https://www.usaid.gov/sites/default/files/documents/1868/200sbe.pdf>

⁸ Business Dictionary. (n.d.). Litigation. Business Dictionary Retrieved from: <http://www.businessdictionary.com/definition/litigation.html>

⁹ Scott Brown. Christine Cervenak. David Fairman. (n.d). Alternative Dispute Resolution. USAID retrieved from: <https://www.usaid.gov/sites/default/files/documents/1868/200sbe.pdf>

Alternatives	Prevention	Mediation	Negotiation	Binding Arbitration	Non-binding Arbitration	Litigation
Resolve the dispute quickly	No resolution needed, since it happens before the dispute occurs	Yes	Since there is no mediator, the negotiation can last for months or years: until they agree on a solution	There is an arbitrator so it is solved pretty quickly	The private judge tries to find a solution as quickly as possible	A trial can last for months or years
Minimize costs	Very low	Low	Very low	High	High	Very high: lawyers, investigations, experts, ...
At the end, the best solution for the two parties	Yes because less issues possible since they were prevented	The parties negotiate, hence at the end they find a solution working for both, helping by the mediator	The parties negotiate, hence at the end they find a solution working for both	The arbitrator tries to be the fairest possible. Even if the parties disagree they have to accept the solution	The private judge tries to be the fairest possible → at the end, the parties can choose if they agree with the solution are not	A trial is a good solution for one of the parties but rarely for both
Maintain privacy	Yes: only between the two parties	Yes: only the two parties and the mediator	Yes: only the two parties	Yes: only the two parties and the arbitrator	Yes: only the two parties and the private judge	A trial is public
Maintain relationships between the two parties	Preventing issues allows good relationships between the parties	The mediator is also here to keep good relationships	One goal of negotiation is to maintain relationships, but sometimes it can be hard	Since, the parties do not choose the end solution, cannot blame one another	One party can decide to accept the solution and the other one no. It can lead to another issue	When parties are going to trial, this is the beginning of a "war" between them
Link issues (higher = less issues)	To prevent issues but sometimes not all issues are prevented	Normally no other issues	Normally no other issues	Other disputes, cost, lose of time, ...	Other disputes, cost, lose of time, ...	A lot of possible issues: go bankrupt, lose of customers, so on
Involvement of a third and neutral party	Only the two parties	A mediator	Only the two parties of the contract	An arbitrator	A private judge	A judge

Table 1- Goals and objectives of each alternative

Prevention is an ADR but it cannot be used once the issue is here. Indeed, prevention, as the definition explains it, is used before any issue had occurred. Parties do it to prevent every

possible issue. If there is an issue that was not prevented, then the parties will have to use the other 5 alternatives: mediation, negotiation, binding arbitration, non-binding arbitration and litigation.

Prevention is realized before a dispute occurs. This is not the point of the paper, since we want to discover which alternative is preferred to resolve a dispute. So, the issue is already here. It is too late to prevent it. Hence, prevention cannot be selected as the preferred solution when managing a dispute.

FINDINGS

Step 5 – Analysis of our 5 remaining alternatives

Since prevention happens before the issue occurred, I will not analyze further this alternative.

Alternatives	Mediation	Negotiation	Binding Arbitration	Non-binding Arbitration	Litigation
Resolve the dispute quickly	2	1	2	3	0
Minimize costs	3	3	2	1	0
At the end, the best solution for the two parties	2	2	1	2	1
Maintain privacy	2	3	2	2	0
Maintain relationships between the two parties	3	2	2	1	0
Link issues (high number = less issues)	3	3	1	1	0
Involvement of a third and neutral party	3	0	3	3	3
Average	2,57	2	1,86	1,86	0,57

Table 2 – ADR Multi-Attribute Decision Analysis

- 0 = Highly unlikely to satisfy goals and objectives
- 1 = Unlikely to satisfy goals and objectives
- 2 = Likely to satisfy goals and objectives
- 3 = Highly likely to satisfy goals and objectives

By doing this Multi-attribute decision analysis, I can select the most effective existing alternative dispute resolutions.

A score under one is an unacceptable score to realize the objectives. Indeed, it means that the alternative does not meet objectives and goals at all. Litigation has an average of 0,57, which is under 1. So, we can drop litigation.

Moreover, the point of this paper is to discover which ADR is more effective without going to court. Indeed, the point is not to lose money and time by going to trial. So, this is another reason to drop litigation.

So, now on, four alternatives will be analyzed further. As a reminder, these alternatives are mediation, negotiation, binding arbitration, non-binding arbitration and litigation.

Step 6 – The MADA allows a selection of the preferred alternative

As you can see, mediation gets the higher average grade. Nevertheless, hotel companies do not always choose mediation as the first way to resolve a dispute with their customers.

The study now focuses on mediation, negotiation, binding arbitration and non-binding arbitration. We can make a rank order for the remaining alternatives, according to the results of the MADA above (table 2):

1. Mediation
2. Negotiation
3. Binding arbitration AND Non-binding arbitration (same average)

A Weighting Technique, producing a true RATIO SCALE, will give us a clearer vision of the preferred option when managing a dispute between two parties. It is important to remember, that the paper focuses on a situation where the dispute is already here so prevention is impossible. Moreover, the goal is not to go to trial. Indeed, the MADA gives the first step of the analysis, but more proofs are needed.

The table below gives a percentage of each possible alternative compared to the others. It highlights the preferred alternative when managing a dispute between two parties.

Mediation compared to Negotiation	2,57 / 2	128,5%
Mediation compared to Binding arbitration	2,57 / 1,86	138,2%
Mediation compared to Non-binding arbitration	2,57 / 1,86	138,2%
Negotiation compared to Mediation	2 / 2,57	77,8%
Negotiation compared to Binding arbitration	2 / 1,86	107,5%
Negotiation compared to Non-binding arbitration	2 / 1,86	107,5%
Non-binding arbitration compared to Mediation	1,86 / 2,57	72,4%
Non-binding arbitration compared to Negotiation	1,86 / 2	93%
Non-binding arbitration compared to Binding arbitration	1,86 / 1,86	100%

Table 3 – Additive Weighting Calculation

This calculation does not show the results of binding arbitration since non-binding and binding arbitrations get the same average on the MADA. So, the results are the same.

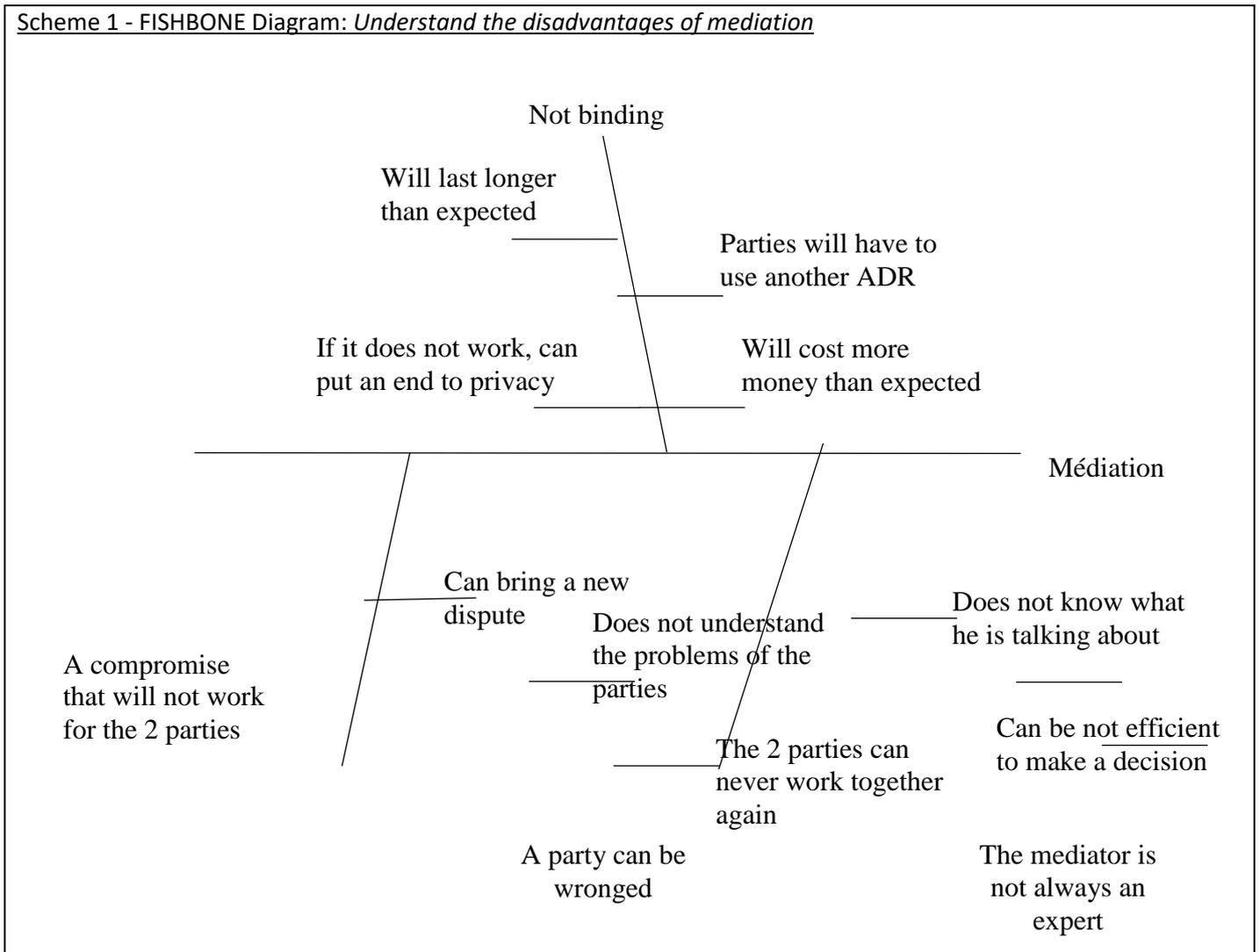
This analysis goes in the way that mediation is the greater solution to manage dispute between two parties. Indeed, it always gets more than 100% as a result. Negotiation is the second one. It also has a lot of advantages. Nevertheless, compared to mediation, it is not the best solution.

Step 7 – Negotiation or Mediation as the preferred solution?

So, the Multi-Attribute Decision analysis (table 2) gave a clear vision of advantages and disadvantages of each alternative. It also gave a ranking which put mediation first. These results are confirmed by the Additive Weighting calculation. Nevertheless, companies are not always choosing mediation when resolving dispute. This is the reason why we need to better understand disadvantages of mediation. A fishbone diagram will help to have a clear vision. Indeed, I need to understand why companies are not always choosing mediation since it gets the higher average grade in the MADA.

This fishbone diagram below makes the disadvantages of mediation clearer.

Scheme 1 - FISHBONE Diagram: *Understand the disadvantages of mediation*



As this diagram shows it, several criteria are not always respected with mediation. Moreover, when they are not respected, it leads to several linked issues. This is the reason why mediation is not the first type of resolution used.

The three major issues can be really important in the hospitality sector. Indeed, if a party is wronged, it means the client will never come back in this hotel. So, the relationship between the two parties is not maintained. Moreover, if a customer is not satisfied with the end solution, he will make a bad notice about the company in the Internet. In our century, a bad notice on the internet can ruin a brand's image. So, if the customer is wrong, he will tell it on the internet and the hotel will lose a lot of potential clients. It is important to know that a customer will more often tell when he had a bad experience than when it was a good one. Moreover, mediation is not binding. It means that at the end the process is longer and more expensive than expected, which is bad for both parties and not respecting two of the most important criteria.

Now that we discovered that mediation is actually not always the best solution for the hospitality sector when managing a dispute, what should be the other preferred analysis?

To discover the second preferred option, we will use another time the table 2, the Multi-attribute decision analysis made. The second alternative in the rank order, according to this analysis and approved by the table 3, is the negotiation. So, we can say that negotiation should be the best dispute resolution for hospitality contracts when parties do not want to use mediation.

Nevertheless, according to all the analysis above, mediation is the best alternative. Indeed, as the fishbone diagram describes it, it can sometimes not be effective. But it is important to remember that every alternative will have possible issues. You cannot predict the future. So, in a nutshell, mediation is the preferred analysis.

CONCLUSIONS

Disputes between two parties in hospitality contracts occur every day. Indeed, even if you have tried to prevent issues, you cannot prevent everything. Hence, we can say that a dispute between the two parties of the contract is clearly possible. Six alternative dispute resolutions can be used when managing a dispute. These alternatives are: prevention, mediation, negotiation, non-binding arbitration, binding arbitration and litigation.

The study of each alternative highlights mediation as the preferred alternative for hospitality contract management. Indeed, mediation achieves objectives expected by parties, such as does not last long, not expensive or privacy. The multi-attribution decision analysis and the Additive Weighting calculation confirmed mediation as the preferred alternative.

Nevertheless, mediation has some disadvantages that can explain why parties are sometimes reluctant to use it when managing a dispute. Indeed, you cannot always be sure that the mediation will be a success and if it is not then they will be some linked issues. But compared to the other alternatives, it is, indeed, the preferred alternative.

Finally, it is important to know that other possible ways of managing dispute than the six alternative dispute resolutions exist. For example, Issue Review boards are the next wave of ADR according to the article¹⁰ of Jennifer Wolf and Maurice Robinson.

¹⁰ Jennifer Wolf and Maurice Robinson. (2004). Issue Review Boards – The Next Wave of Alternative Dispute Resolution for the Hospitality Industry. Institute for Conflict Management; Retrieved from: http://ishc.com/wp-content/uploads/IRB_article.pdf

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Eugénie Blanchard is a SKEMA Business School (Paris) student, specialized in Project and Program Management and Business Development. She joined SKEMA in 2014 and improved her knowledge in Finance, Marketing, Law and Management during classes and internships. Her last internship in marketing and business development in E-lixir Consulting (Madrid) highlighted her wish to enhance her knowledge and capacities in project management. This is the reason why she chose the MSc Project and Program Management and Business Development for her last year at school.